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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/396,352	09/14/1999	TUMAY O. TUMER	101210.0001US1	7308
24392 7590 02/17/2009 FISH & ASSOCIATES, PC ROBERT D. FISH 2603 Main Street Suite 1000 Irvine, CA 92614-6232				
EXAMINER				
LEE, BENJAMIN C				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TUMAY O. TUMER

Application No. 09/396,352
Technology Center 2600

Mailed: February 17, 2009

Before PAMELA S. BENNETT, *Review Team Paralegal*.
BENNETT, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on February 9, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matters requiring attention prior to docketing.

APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER

Appellant filed an Appeal Brief dated May 30, 2006. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

According to 37 CFR § 41.37(c) (v), an Appeal Brief must include the following:

(v) ***Summary Of Claimed Subject Matter.*** A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters

The “Summary of claimed subject matter” appearing on pages 2 and 3 of the Appeal Brief filed May 30, 2006 is deficient because it does not separately map the independent claims (27, 28 and 75) to the specification. Correction is required.

Section 1205.03 of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 6, September 2007) states, in part:

(B) When the Office holds the brief to be defective solely due to appellant’s failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the

Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

EXAMINER'S ANSWER, EVIDENCE RELIED UPON

Section §1207.02 MPEP states:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed July 20, 2006 is deficient because the "Evidence Relied Upon" section fails to include the Kip, Moskowitz, Carroll, Tuttle, Roth, Schoenian, Carney and Lake references used in the grounds of rejection appearing on pages 3-18 of the Examiner's Answer.

Appropriate correction is required.

EXAMINER'S CONSIDERATION OF REPLY BRIEF

A Reply Brief was filed in this application on September 19, 2007. There is no evidence on the record indicating that the Examiner has considered the Reply Brief in accordance with 37 CFR § 41.43(a)(1) and MPEP § 1208, part II.

CONCLUSION

Accordingly, it is **ORDERED** that the application is returned to the Examiner:

1) to hold the Appeal Brief filed May 30, 2006 defective, as required by 37 CFR § 41.37(d);

2) to notify Appellant to submit a “paper” which corrects the Appeal Brief’s Summary of Claimed Subject Matter under 37 CFR §41.37(c)(1)(v);

3) to acknowledge and consider any “paper” submitted by Appellant to correct the Appeal Brief;

4) to issue a PTO-90 citing the missing references listed under the Evidence Relied Upon section, paragraph (8);

5) to consider the Reply Brief filed September 19, 2007 as indicated above; and

6) such further action as may be required.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

PSB

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